

REMARKS

Claims 1-3 have been amended to delete extraneous commas and to correct grammatical errors.

Claims 1 and 2 have also been amended as kindly suggested by the Examiner to read on a salt or diastereomer in the singular. Claim 3 has been rewritten in independent form. These amendments dispose of the rejection under 35 U.S.C. § 112, paragraph 2.

In addition, the proviso has been stricken from claim 1 to obviate the rejection under § 112, first paragraph. To avoid reinstatement of the previous § 102 and § 103 rejections based on by Thorarensen, *et al.* (US2004/0110802) and Riordan (U.S. 5,756,524), claims 1 and 2 have been amended. The relevant compounds in Riordan and Thorarensen each have either a methyl ester or a carboxylic acid at the 2-position of the “Y” phenyl ring. This possibility has been deleted from the present claims through the removal of the CO₂R⁹ moiety. As Applicants noted previously, the application on which Riordan is based, WO 1995/025723, also discloses analogs in which the 2-position of the Y phenyl group is substituted by CN or NH₂. Accordingly, Y substituents CN and NR⁹R¹⁰ have also been deleted from claims 1 and 2. It is not new matter simply to delete a portion of the claimed invention. Applicants also note neither Riordan nor Thorarensen teach that a critical feature of the compounds is pyridine substituted at the 3,5-positions. Any overlap is simply coincidental, and has been deleted by the amendment to the claims.

Election/Restrictions

Claims 1 and 2 have been amended to delete non-elected matter. In particular, Y = H has been deleted, as have the phrases that allow formation of heterocyclic rings. Applicants previously deleted all references to hetaryl substituents.

Claim 3 has been rewritten as an independent claim and two non-elected compounds have been deleted. Applicants note that claim 3 uses Markush format, so the recitation of “and pharmaceutical salts or diastereomers thereof” in the plural is appropriate here.

Applicants believe the claims as amended are consistent with the original restriction requirement and their election. Applicants do note confusion arose from the terminology used in original restriction requirement, as Group I included compounds in which “no additional heterocycle is present.” According to the definitions provided in the specification, “heterocyclyl” is defined as “a 3-8 membered saturated ring containing 1-3 heteroatoms....” (PCT Publication, WO 2004/054977, at page 8, lines 18-20 (emphasis added).) In contrast, the term “hetaryl” is defined as “an unsubstituted or optionally substituted 5- or 6-membered heteroaromatic ring containing one or more heteroatoms....” (WO 2004/054977, at page 8, lines 15-16 (emphasis added).) It was not until the Office Action mailed January 11, 2010 that the Examiner indicated that “all additional heterocycles and heteroaryls pertain to nonelected subject matter.” (Office Action mailed Jan. 11, 2010, at page 3.) Applicants understand from this exchange that the Examiner intended Group I to cover compounds in which B is aryl, Y is aryl, and no additional heterocycle or hetaryl is present. The claims have been amended to be consistent with this understanding. If some portion of the original restriction requirement has been missed, the undersigned would be grateful for a telephone call pointing out the location of any such omission.

These amendments directly address all rejections and objections made by the Office and comply with the requirements of form set forth in the previous Office action. As the present amendments place claims 1-3, 4, 7, and 8 in condition for allowance, Applicants respectfully request the Examiner exercise her discretion to enter these amendments though made after final and to pass these claims to issue. Should minor issues remain that could be resolved over the phone, a telephone call to the undersigned is respectfully requested.

In the unlikely event that the transmittal letter is separated from this document and the Patent Office determines that an extension and/or other relief is required, applicants petition for any required relief including extensions of time and authorize the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 03-1952 referencing docket No. 415852000700. However, the Commissioner is not authorized to charge the issue fee to the deposit account.

Dated: May 9, 2011

Respectfully submitted,

By / Katharine E. McElhone /

Katharine E. McElhone

Registration No.: 57,462

MORRISON & FOERSTER LLP

12531 High Bluff Drive, Suite 100

San Diego, California 92130-2040

Telephone: (858) 720-7997

Facsimile: (858) 720-5125